

SENATE BILL REPORT

SB 5968

As of January 9, 2024

Title: An act relating to regulating home equity sharing agreements under the consumer loan act.

Brief Description: Regulating home equity sharing agreements under the consumer loan act.

Sponsors: Senator Stanford.

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 1/11/24.

Brief Summary of Bill

- Establishes the regulation of home equity sharing agreements under the Consumer Loan Act.
- Establishes certain protections for borrowers.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Staff: Clint McCarthy (786-7319)

Background: Financial Tools to Access Home Equity. Homeowners have a number of options for accessing equity in their homes.

Home Equity Loans. This product allows a borrower to receive a lump sum equity draw in exchange for repaying the principle at a fixed interest rate. These loans are commonly referred to as second liens or second mortgages. Under current federal tax law, home equity loan interest is tax deductible through 2026. Certain fees and credit checks are needed for approval from a lender.

Cash-out Refinance. This is a similar product to a home equity loan, but it refinances the

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entire value of the mortgage in addition to the amount of equity a borrower wants to take out of their home. A cash-out refinance requires certain fees and credit checks for approval from a lender. The interest on repayments may be tax deductible. The additional proceeds from a cash-out refinance are not taxable.

Home Equity Line of Credit. A home equity line of credit (HELOC) provides a borrower a line of credit. Rather than having to take a lump sum, as one does in a home equity loan or a cash-out refinance, a HELOC allows a borrower to pay interest on the amount of home equity they draw. This financial product has a variable interest rate which can increase or decrease a borrower's payment. Subject to certain limits, HELOC interest may be tax deductible.

Home Equity Sharing Agreements. Home equity sharing agreements (HESA) are financial arrangements between a homeowner and an investor to share ownership and appreciation of a property. Typically, an investor provides funds for a share of a property's value and both parties agree on how to distribute proceeds when a property is either sold or refinanced. During the establishment of a HESA, the borrower is required to pay for certain costs including, but not limited to:

- an appraisal;
- origination fee;
- costs associated with title and escrow;
- title insurance;
- state taxes; and
- notary and recording fees.

HESAs are not currently covered under the Washington Consumer Loan Act.

Summary of Bill: HESA are regulated financial products under the Consumer Loan Act. HESA are subject to the provisions of the Consumer Loan Act. The term home equity sharing agreement is defined as any obligation where a borrower receives an advance sum of money in exchange for an interest or future share of equity in the borrower's residential real estate. The definition of the term residential mortgage loan is expanded to include HESA. Most lenders require the borrower to have 20 percent equity in the home.

Certain rights for owners and mortgagees are established. HESA are subject to certain restrictions. HESA may not:

- be used as a lien against the property;
- run with title to property and is not binding or enforceable at law or in equity against subsequent owners, purchasers, or mortgagees;
- prevent the property owner from renting or using the property as the owner chooses; and
- prevent a mortgagee from refinancing the a mortgage or lean on the property.

Limits on the total amount due under a HESA are established. The total amount due under a

HESA cannot exceed the lesser of:

- any amount paid to the borrower plus the interest amount; or
- 200 percent of the amount paid to the borrower.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.